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EXAMINER

GREENE, DANIEL L

ART UNIT	PAPER NUMBER
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3621

DATE MAILED: 11/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/695,539

Applicant(s)

STEFANOVIC ET AL.

Examiner

Daniel L. Greene

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings were received on 9/26/03. These drawings are acceptable.

Response to Arguments

Applicant's arguments filed 9/16/03 have been fully considered but they are not persuasive. The Applicant submits that the location of the "live bids" and the location of the terminal for entering the "live bids" is at the same location and is therefore unique over the prior art stated. The Applicant further submits that recording different types of users in a database (live and online) is unique over the prior art because the prior art only teaches about online bids.

A reference is to be considered not only for what it expressly states, but also for what it would reasonably have suggested to one of ordinary skill in the art. *In re DeLisle*, 160 USPQ 806 (CCPA 1969).

The Applicant submits that Berent and Rackson do not expressly show the bids from the physical location of the auction even though they discuss the use of "remote auction services" and sites.

However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The collecting and correlating the bids would be performed the same regardless of where the data/bids originated. Thus, this descriptive material (physical location of the auction) will not distinguish the claimed invention from the prior art in terms of patentability, see *In re*

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Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to collect the bids from the remote auction sites be they "live, on location " or via a remote user terminal because the location of the bids does not functionally relate to the steps in the method claimed of recording and manipulating the bids to conclude a auction transaction.

The Applicant further submits that Berent and Rackson do not expressly show the recording of two different types of data (line and online). The Applicant does agree that they show recording online data. The Examiner submits that these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The recording of the data would be performed the same regardless of the type or origination of the data. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to record both the online and live data because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

The Applicant further submits that the prior art teaches about a specific type of auction and therefore is not applicable to the proposed invention.

A reference is to be considered not only for what it expressly states, but also for what it would reasonably have suggested to one of ordinary skill in the art. *In re DeLisle*, 160 USPQ 806 (CCPA 1969).

PTO's guide lines for examining claimed language require: the examiner must make a determination, whether the claimed invention "as a whole" would have been obvious at the time of the invention to one of ordinary skill in the art. See MPEP 2142. In these pending claims, the examiner submits that the particular language does not serve as a limitation on the claim (i.e., "live auction").

The recitation that at an auction location, Claim 18, has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a method, a system, an apparatus, etc. and the portion of the claim following the preamble is a self-contained description of the method or the system, etc., not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951)

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,006,201-Berent et al. [Berent '201], US 6,415,270-Rackson et al. [Rackson '270] and in further view of US 6,226,412-Schwab [Schwab '412].

As per claim 1 :

Berent '201 discloses:

an auction web site system which is able to communicate with the bidder computers of online bidders and receive online bids therefrom, said web site system including auction software components; Fig. 1, Col. 4, lines 23-67

a site terminal at said physical location and operatively connected to said web site system, which site terminal can send the details of live bids from the live bidders to said web site system; Col. 11, lines 25-67, Col. 12, lines 1-13, Fig. 11.

Berent '201 discloses the claimed invention but is not specific in wherein online bids and live bids, are recorded by said auction software components in said web site system. Rackson '270 teaches that it is known to have online bids and live bids recorded by said auction software components in said web site system. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have online bids and live bids

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recorded by said auction software components in said web site system as taught by Rackson '270, since Rackson '270 teaches that to select an optimal bid, the priority scheme checks the set of criteria (time stamp, form of payment, performance statistics, etc.) at Col. 13, lines 10-20 to determine the correct winner of the auction.

As per claim 2.

Berent '201 further discloses:

wherein up-to-date status information of the auction is displayed to bidders by the Web site system. Col. 10, lines 1-8.

As per claim 3.

Berent '201 further discloses:

wherein live bids and online bids are recorded by the web site system in the order received. Col. 10, lines 1-8.

As per claim 4.

Berent '201 discloses the claimed invention except for at least one media capture device operatively connected to said site terminal, wherein the media input from said media capture device is transmitted by said site terminal to said Web site system, where said Web site system includes media broadcast components which will transmit said media input from said media capture device to bidder computers. However, Berent '201 does teach about an image and information about the vehicle. Col. 9, lines 64-67. Schwab '412 teaches that it is known to have at least one media capture device operatively connected to said site terminal,

wherein the media input from said media capture device is transmitted by said site terminal to said Web site system, where said Web site system includes media broadcast components which will transmit said media input from said media capture device to bidder computers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have at least one media capture device operatively connected to said site terminal, wherein the media input from said media capture device is transmitted by said site terminal to said Web site system, where said Web site system includes media broadcast components which will transmit said media input from said media capture device to bidder computers as taught by Schwab '412, since Schwab '412 teaches that at the remote sites, still-video images or live camera signals ...are transmitted to the central database computer (Col. 10, lines 55-60) and then relayed to the remote sites so they may participate in the auction.

As per claim 5.

Berent '201 discloses the claimed invention except for wherein said site terminal processes said media input before transmitting it to said web site system. However, Berent '201 does teach about an image and information about the vehicle. Col. 9, lines 64-67. Schwab '412 teaches that it is known to wherein said site terminal processes said media input before transmitting it to said web site system.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have said site terminal processes said media input before transmitting same to said web site system as taught by Schwab '412, since Schwab '412 teaches that at the remote sites, still-video images or live camera signals ...are transmitted to the central

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database computer (Col. 10, lines 55-60) and then relayed to the remote sites so they may participate in the auction.

As per claim 6.

Berent '201 discloses the claimed invention except for wherein said media input is compressed before transmission of same to said Web site system.

However, Berent '201 does teach about an image and information about the vehicle. Col. 9, lines 64-67. Schwab '412 teaches that it is known to wherein said media input is compressed before transmission of same to said Web site system.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have said media input compressed before transmission of same to said Web site system as taught by Schwab '412, since Schwab '412 teaches that the software will import the image, and then create a data-compression version (Col. 8, lines 50-60) to facilitate storage and speed of data transfer.

As per claim 7.

Berent '201 further discloses:

wherein said web site system provides up to date auction status information to an online bidder by transmitting said information to the bidder computer of said online bidder. Col. 10, lines 9-27.

As per claim 8.

Berent '201 further discloses:

wherein said web site system provides up to date auction status information to live bidders by transmitting said information to the site terminal. Col. 10, lines 1-27.

As per claim 9.

Berent '201 discloses the claimed invention except for wherein each live bid or online bid is time-stamped when received by said web site system.

However, Berent '201 does teach about a Purchase Summary that includes information about the sale. Col. 10, lines 40-55.. Rackson '270 teaches that it is known to wherein each live bid or online bid is time-stamped when received by said web site system.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have each live bid or online bid time-stamped when received by said web site system as taught by Rackson '270, since Rackson '270 teaches that wherein each live bid or online bid is time-stamped when received by said web site system Col. 13, lines 10-35 to "break the tie" on duplicate bids.

As per claim 10.

Berent '201 discloses the claimed invention except for wherein bids are accepted chronologically in order of their time-stamps.

However, Berent '201 does teach about a Purchase Summary that includes information about the sale. Col. 10, lines 40-55. Rackson '270 teaches that it is known to wherein bids are accepted chronologically in order of their time-stamps.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have bids accepted chronologically in order of their time-stamps as taught by Rackson '270, since Rackson '270 teaches that bids are accepted chronologically in order of their time-stamps Col. 13, lines 10-35 to "break the tie" on duplicate bids.

As per claim 11.

Berent '201 discloses the claimed invention except for wherein the web site system and the site terminal are one computer.

Rackson '270 teaches that it is known to wherein the web site system and the site terminal are one computer.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the web site system and the site terminal as one computer as taught by Rackson '270, since Rackson '270 shows that in Fig. 3, the web site system and the site terminal can be one computer.

As per claim 12.

Berent '201 further discloses:

wherein the web site system and the site terminal are separate computers. Fig. 1.

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As per claim 13.

Berent '201 further discloses:

wherein the web site system is not located at the auction location. Fig. 1.

As per claim 14.

Berent '201 further discloses:

wherein said auction software components comprise:

- a) a merchandise database containing information pertaining to auction lots; Figs. 2A1,2A2
- b) a bid database containing details of bids received from bidders with respect to auction lots; Fig. 11
- c) an auction control system which during the conduct of an auction will receive live bid details from the site terminal and online bids from bidder computers and record the details of said bids in the bid database; and which upon detection of an auction-closing condition will accept no further bids and the successful bidder will be determined based on accepted bids stored in the bid database. Fig. 9.

As per claim 15.

Berent '201 further discloses:

wherein the auction-closing condition is a manually initiated closing of an auction by an operator of said Web site system. Col. 11, lines 32-35.

As per claim 16.

Berent '201 further discloses:

wherein the auction-closing condition, which is detected, is based on a preprogrammed formula, which can be automatically detected by the auction control system.

Col. 11, lines 38-50.

As per claim 17.

Berent '201 further discloses:

wherein the auction-closing condition, which is detected, is the passage of a predetermined amount of time between the placements of bids. Col. 11, lines 32-50.

As per claim 18.

Berent '201 discloses:

- a) providing an auction web site system which can communicate with the bidder computers of online bidders, said web site system including auction software components capable of receiving and recording online bids and live bids in respect of auction lots; Fig. 1, Col. 4, lines 23-67.
- b) providing a site terminal at the auction location operatively connected to said web site system; Col. 11, lines 25-67, Col. 12, lines 1-13, Fig. 11.
- c) with respect to an auction lot, using said web site system and site terminal to conduct an auction in the following steps:

i) accepting online-bidders to transmit online- bids from bidder computers to said web site system; Col. 10, lines 1-8.

Berent '201 discloses the claimed invention but is not specific in wherein online bids and live bids, are recorded by said auction software components in said web site system. Rackson '270 teaches that it is known to have online bids and live bids recorded by said auction software components in said web site system. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have online bids and live bids recorded by said auction software components in said web site system as taught by Rackson '270, since Rackson '270 teaches that to select an optimal bid, the priority scheme checks the set of criteria (time stamp, form of payment, performance statistics, etc.) at Col. 13, lines 10-20 to determine the correct winner of the auction.

ii) allowing live bidders to place live bids at the auction location, said live bids being transmitted from said site terminal to said web site system; Col. 10, lines 8-26.

iii) recording online bids and live bids received by the Web site system in a database; Col. 10, lines 1-67.

iv) upon detection of an auction-closing condition, ceasing the acceptance of any further bids by said web site system. Fig. 9.

As per claim 19.

Berent '201 further discloses:

further comprising determining the successful bidder after detection of the auction-closing condition. Col. 11, lines 25-50.

As per claim 20.

Berent '201 further discloses:

wherein the conduct of the auction further comprises displaying information pertaining to the auction lot to online bidders at their bidder computers. Col. 10, lines 1-10.

As per claim 21.

Berent '201 further discloses:

wherein bids are recorded in said web site system in the order in which they are received. Col. 10, lines 1-8.

As per claim 22.

Berent '201 discloses the claimed invention except for at least one media capture device operatively connected to said site terminal, wherein the media input from said media capture device is transmitted by said site terminal to said Web site system, where said Web site system includes media broadcast components which will transmit said media input from said media capture device to bidder computers. However, Berent '201 does teach about an image and information about the vehicle. Col. 9, lines 64-67. Schwab '412 teaches that it is known to have at least one media capture device operatively connected to said site terminal, wherein the media input from said media capture device is transmitted by said site terminal to said Web site system, where said Web site system includes media broadcast components which will transmit said media input from said media capture device to bidder computers. It would have been obvious to one having ordinary skill in the art at the time the invention was

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made to have at least one media capture device operatively connected to said site terminal, wherein the media input from said media capture device is transmitted by said site terminal to said Web site system, where said Web site system includes media broadcast components which will transmit said media input from said media capture device to bidder computers as taught by Schwab '412, since Schwab '412 teaches that at the remote sites, still-video images or live camera signals ...are transmitted to the central database computer (Col. 10, lines 55-60) and then relayed to the remote sites so they may participate in the auction.

As per claim 23.

Berent '201 discloses the claimed invention except for wherein said site terminal processes said media input before transmitting it to said web site system. However, Berent '201 does teach about an image and information about the vehicle. Col. 9, lines 64-67. Schwab '412 teaches that it is known to wherein said site terminal processes said media input before transmitting it to said web site system.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have said site terminal processes said media input before transmitting same to said web site system as taught by Schwab '412, since Schwab '412 teaches that at the remote sites, still-video images or live camera signals ...are transmitted to the central database computer (Col. 10, lines 55-60) and then relayed to the remote sites so they may participate in the auction.

As per claim 24.

Berent '201 discloses the claimed invention except for wherein said media input is compressed before transmission of same to said Web site system.

However, Berent '201 does teach about an image and information about the vehicle. Col. 9, lines 64-67. Schwab '412 teaches that it is known to wherein said media input is compressed before transmission of same to said Web site system.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have said media input compressed before transmission of same to said Web site system as taught by Schwab '412, since Schwab '412 teaches that the software will import the image, and then create a data-compression version (Col. 8, lines 50-60) to facilitate storage and speed of data transfer.

As per claim 25.

Berent '201 further discloses:

wherein the conduct of the auction further comprises the step of displaying up to date auction status information to all bidders. Col. 10, lines 9-27.

As per claim 26.

Berent '201 discloses the claimed invention except for wherein each live bid or online bid is time-stamped when received by said web site system.

However, Berent '201 does teach about a Purchase Summary that includes information about the sale. Col. 10, lines 40-55.. Rackson '270 teaches that it is known to wherein each live bid or online bid is time-stamped when received by said web site system.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have each live bid or online bid time-stamped when received by said web site system as taught by Rackson '270, since Rackson '270 teaches that wherein each live bid or online bid is time-stamped when received by said web site system Col. 13, lines 10-35 to "break the tie" on duplicate bids.

As per claim 27.

Berent '201 discloses the claimed invention except for wherein bids are accepted chronologically in order of their time-stamps.

However, Berent '201 does teach about a Purchase Summary that includes information about the sale. Col. 10, lines 40-55. Rackson '270 teaches that it is known to wherein bids are accepted chronologically in order of their time-stamps.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have bids accepted chronologically in order of their time-stamps as taught by Rackson '270, since Rackson '270 teaches that bids are accepted chronologically in order of their time-stamps Col. 13, lines 10-35 to "break the tie" on duplicate bids.

As per claim 28.

Berent '201 discloses:

a) providing an auction web site system which can communicate with a plurality of online bidder computers, said web site system including auction software components capable of receiving and recording online bids from said plurality of online bidder computers in respect of said auction lots. Fig. 1, Col. 4, lines 23-67.

b) providing a site terminal at said defined live auction location, said site terminal operatively connected to said web site system and able to integrate a plurality of live auction bids into said auction web site system from said single site terminal. Col. 11, lines 25-67, Col. 12, lines 1-13, Fig. 11.

i) accepting online-bidders to transmit online- bids from bidder computers to said web site system; Col. 10, lines 1-8.

Berent '201 discloses the claimed invention but is not specific in wherein online bids and live bids, are recorded by said auction software components in said web site system. Rackson '270 teaches that it is known to have online bids and live bids recorded by said auction software components in said web site system. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have online bids and live bids recorded by said auction software components in said web site system as taught by Rackson '270, since Rackson '270 teaches that to select an optimal bid, the priority scheme checks the set of criteria (time stamp, form of payment, performance statistics, etc.) at Col. 13, lines 10-20 to determine the correct winner of the auction.

- ii) allowing live bidders to place live bids at the auction location, said live bids being transmitted from said site terminal to said web site system; Col. 10, lines 8-26.
- iii) recording online bids and live bids received by the Web site system in a database; Col. 10, lines 1-67.
- iv) differentiating said plurality of live auction bids. Fig. 11.
- iv) upon detection of an auction-closing condition, ceasing the acceptance of any further bids by said web site system. Fig. 9.

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

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Conclusion

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel L. Greene whose telephone number is 703-306-5539. The examiner can normally be reached on M-Thur. 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on 703-305-9768. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

11/13/01 DLG


JAMES P. TRAMMELL
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3300